



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Marlene A. Busick - Waiver of Overpayments  
for Health Insurance  
File: B-226620  
Date: June 8, 1987

### DIGEST

An employee who transferred from a full-time to a part-time position received overpayments of salary for approximately 6-1/2 years because the agency failed to increase her deductions for health insurance upon her conversion to part-time status. Waiver of the overpayments is granted because there is no evidence that the employee was aware that her conversion to part-time status required an increase in her insurance deductions. Furthermore, although the agency deducted insurance premiums at the proper rate for an interval of 10 pay periods, the temporary change in deductions was not accompanied by any notification to the employee and she reasonably may not have noticed the slight difference in her pay.

### DECISION

Marlene A. Busick, an employee of the United States Department of Agriculture, appeals our Claims Group's settlement which partially denied her request for waiver of salary overpayments. These overpayments resulted from Agriculture's failure to deduct the appropriate amount of health insurance premiums from Ms. Busick's salary following her conversion from full-time to part-time employment. For the reasons that follow, we hold that the entire amount of Ms. Busick's indebtedness may be waived.

### FACTS

Ms. Busick had been employed for approximately 1-1/2 years in a full-time position with the Department of the Interior when, on June 17, 1979, she transferred to the part-time position of Authorization Clerk, grade GS-4, in Agriculture's Animal and Plant Health Inspection Service. At that time Agriculture should have, but did not, increase Ms. Busick's premiums for the health insurance plan in which she had enrolled effective

039153

January 14, 1979, as required by provisions of the Federal Employees Part-Time Career Employment Act of 1978, 5 U.S.C. §§ 8906(b)(1) and (3) (1982). Under that law, the government's contributions for a part-time employee's health benefits must be prorated to reflect the ratio that the employee's weekly working hours bear to the hours which would be worked by a full-time employee in a comparable position.

Agriculture did not process a personnel action increasing Ms. Busick's health insurance deductions until January 29, 1986, when it discovered through an audit of part-time employees' payroll records that the proper deductions were not being made. At that time, Agriculture advised Ms. Busick that it would be increasing her insurance deductions and that the prior insufficient withholdings for insurance had resulted in a total overpayment to her of \$1,494.91. While Agriculture determined that the period of the overpayment to Ms. Busick extended from June 17, 1979, the date of her transfer, to January 29, 1986, the date that the error was officially corrected, it found that proper deductions had been made during a brief interval between March 9 and July 26, 1980. During this 20-week interval including 10 pay periods, the agency had raised Ms. Busick's insurance contributions from \$19.23 to \$25.35, thus decreasing her biweekly salary by \$6.12. Agriculture stated in its administrative report that, "[w]e are unable to explain why this occurred, since there were no personnel actions processed during this period that would have affected [sic] the change."

Agriculture forwarded Ms. Busick's request for waiver of her \$1,494.91 indebtedness to our Claims Group, but recommended that waiver be limited to the \$203.43 Ms. Busick received between June 17, 1979, the date of her transfer, and March 9, 1980, the inception of the 10-pay-period interval of proper deductions. In support of its recommendation that the \$203.43 overpayment be waived, Agriculture stated that there was no indication that Ms. Busick should have known that insufficient insurance premiums were being withheld from her pay. Agriculture also noted that, although health insurance literature distributed during "open seasons" outlined the proration rules applicable to part-time employees, it is possible that Ms. Busick did not receive this literature.

Agriculture recommended that our Claims Group deny waiver of the \$1,291.48 Ms. Busick received between July 27, 1980, and January 29, 1986, following the 10-pay-period interval of proper deductions. The agency reasoned that the \$6.12 decrease in Ms. Busick's salary during the period of proper deductions should have caused her to question the correctness of her pay, and her failure to do so rendered her partially

at fault in accepting overpayments during the ensuing 5-1/2 years. Our Claims Group concurred with Agriculture's recommendation, granting waiver of Ms. Busick's indebtedness for \$203.43 but denying waiver of the \$1,291.48 balance.

Ms. Busick states that she was not aware that her conversion to part-time status required an increase in her health insurance deductions until Agriculture sent her the official personnel action increasing her deductions effective January 29, 1986. She states that she did not notice the relatively small difference of \$6.12 in her biweekly pay during the interval of proper deductions, and thus had no reason to question the correctness of her pay. Ms. Busick argues that she should not be penalized for an error that was solely the fault of the government, and that repayment of the \$1,291.48 would impose a severe financial hardship on her.

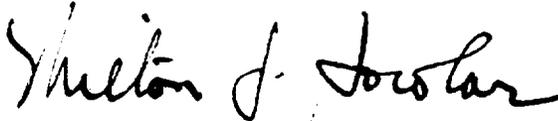
#### DISCUSSION

Under the authority of 5 U.S.C. § 5584 (1982 & Supp. III 1985), this Office may waive overpayments of pay and allowances received by an employee if collection action "would be against equity and good conscience and not in the best interests of the United States." However, that authority may not be exercised if there is an indication of fault on the part of the employee. "Fault" is considered to exist if it is determined that an employee knew or should have known that an error existed but failed to take corrective action. See 4 C.F.R. § 91.5 (1986). See also Hollis W. Bowers, B-219122, January 22, 1986, 65 Comp. Gen. \_\_\_\_.

Our review of the record indicates that Ms. Busick reasonably could not have known or suspected that insufficient health insurance premiums were being withheld from her pay during the entire period June 17, 1979, to January 29, 1986. It is undisputed that Agriculture did not apprise Ms. Busick that her conversion to part-time status required an increase in her health insurance deductions until it issued the official personnel action increasing her deductions on January 29, 1986, and there is no evidence that Ms. Busick was aware before that time of the special proration rules applicable to part-time employees. Although "open season" literature may have contained general information concerning the part-time proration rules, Agriculture acknowledges that Ms. Busick may not have received this literature. Also, we note that Ms. Busick's experience with federal health benefits in general was limited, since she had been employed by the government for only 1-1/2 years and enrolled in a health benefits plan for only 5 months prior to her conversion to part-time status.

Furthermore, we do not believe that Ms. Busick was at fault for failing to notice or question the temporary increase in her health insurance deductions between March 9 and July 26, 1980. According to Agriculture, the increase in Ms. Busick's deductions was not attended by any official action or notification to the employee. While the increase in deductions reduced Ms. Busick's biweekly pay by \$6.12, we accept her assertion that she did not notice the reduction because of its relatively small size. Accordingly, we decline to hold Ms. Busick at fault for accepting erroneous payments during the period following the temporary increase, July 27, 1980, to January 29, 1986, and we waive those payments in the amount of \$1,291.48.

For the reasons stated above, we hold that Ms. Busick's entire indebtedness for \$1,494.91 may be waived. Accordingly, we affirm the portion of our Claims Group's determination granting waiver of her indebtedness for \$203.43 and reverse the portion denying waiver of the \$1,291.48 balance.



Acting Comptroller General  
of the United States